



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Joseph W. Reardon
Assistant Commissioner
for Consumer Protection

Douglas Meckes, DVM
State Veterinarian

November 30, 2020

Melissa Lefler
Owner
Lake Norman Puppy Planet
896 Dove Court
Denver, North Carolina 28037

NOTICE OF DENIAL OF LICENSE APPLICATION AND NOTICE OF DEFICIENCIES

Facility: Lake Norman Puppy Planet

Dear Ms. Lefler:

This letter is in response to your application for a boarding kennel license from the Animal Welfare Section ("AWS") of the North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") for Lake Norman Puppy Planet ("the kennel") located at 896 Dove Court, Denver, North Carolina 28037. Pursuant to NCGS § 19A-30(2), (3) and (8), I am issuing this notice to you that your renewal application for a boarding kennel license for Lake Norman Puppy Planet is DENIED effective upon receipt of this notice.

On October 7, 2020, based on the findings of a complaint investigation, AWS assessed a Civil Penalty of \$2,650.00 for violation of N.C.G.S. § 19A-28 and 02 NCAC 52J .0102(1); .0103; .0204(b); .0208; and .0210(c).

During the week of October 12, 2020, Inspector Blatche spoke with the owner of the kennel and she stated that she would submit the boarding kennel application by Friday October 15, 2020 and that the damaged fencing had been replaced.

On October 21, 2020, Inspector Blatche conducted a site visit to confirm that the improvements and corrective actions discussed during the prior week were complete. The site visit revealed that the improvements to the fencing required to comply with the AWA and its regulations were not complete and, in fact, had not been implemented at all. In addition, Inspector Blatche noted and informed the kennel owner that the kennel paperwork continued to be in violation of 02 NCAC 52J .0102(1) and .0209(2).

On November 2, 2020, Inspector Blatche returned to the kennel to conduct a Facility Compliance Inspection (FCI). The FCI report notes that this inspection was "Disapproved" due to the numerous and significant violations of the AWA and its associated rules. This FCI referenced herein has been provided to the kennel and are available on AWS's website at <http://www.ncagr.gov/vet/aws/>.

The FCI report noted the following violations:

- a. 02 NCAC 52J .0102(1) – the sign-in sheets are missing required information;
- b. 02 NCAC 52J .0102(3) – medication logs for the boarding animals are missing and/or inaccurate;
- c. 02 NCAC 52J .0103 – the kennel was unable to make records available when requested for animals currently boarding in the kennel;
- d. 02 NCAC 52J .0201(a) – the housing facilities were not structurally sound or maintained in good repair, as several of the enclosure doors and wall required replacement or repair;
- e. 02 NCAC 52J .0201(a) – the fencing in the large and small dog play yards is not sufficient to protect the animals from injury, contain the animals and/or restrict the entrance of other animals;
- f. 02 NCAC 52J .0201(e) – a large accumulation of debris and discarded materials is evidence of the failure to properly remove debris daily so that the facility can be maintained in a clean and sanitary manner;
- g. 02 NCAC 52J .0201(h) – a separate five-foot perimeter fence is not in place so that the animals can be left unsupervised in the outdoor exercise area;
- h. 02 NCAC 52J .0201(l) – the large accumulation of materials and debris in the walkways and near the exits may present a potential fire hazard in violation of local fire codes;
- i. 02 NCAC 52J .0204(b) – the fencing in the outside play yard is not sufficient to adequately contain the dogs, one of the inside play areas had metal walls with very sharp edges that pose a significant risk of injury to the animals and several small plastic kennel doors are falling off. Therefore, the kennel is in violation of this regulation that requires primary enclosures to be structurally sound and maintained in good repair and in a manner to prevent injury to the animals and that all enclosures shall be constructed to prevent the escape of animals;
- j. 02 NCAC 52J .0207(b)(6) – there is a large accumulation of debris in the walkway and area near the quarantine room in violation of this rule that requires any area accessible to multiple animals shall be kept clean and sanitary;
- k. 02 NCAC 52J .0207(c) - the large accumulation of trash, junk and discarded materials is in violation of this rule that requires that the premises remain free of accumulations of trash, junk, waste products and discarded matter;
- l. 02 NCAC 52J .0209(2) – review of the kennel paperwork and observation of the animals comingled in the play areas shows that owners of several of the comingling animals had not given written permission to the kennel for this contact with other animals as required by this rule;
- m. 02 NCAC 52J .0210(c) – medication that was prescribed to be given in the evening was incorrectly administered to the dog in the morning for 7 consecutive days in violation of this rule; and

- n. 02 NCAC 52J .0210(d) - when requested to produce the required rabies certificates for 4 animals currently boarding at the kennel, the kennel was unable to do so at the time of the FCI. The kennel subsequently submitted copies of the rabies certificates for 3 of the 4 animals but was unable to do so for the 4th animal as its rabies vaccination had expired in violation of NC rabies law;

On November 6, 2020, AWS issued a Notice of Intent to Deny License Renewal and Notice of Deficiencies. In that Notice, the kennel was given the opportunity to submit any information that the kennel believed showed the kennel's compliance with all lawful requirements for renewal of the boarding kennel license. The Notice also informed the kennel that if the kennel should choose not to submit any information, AWS would proceed with its final decision with the information available. Additionally, the letter explained that this Notice in no way limited AWS's ability to take further enforcement action against the kennel for new or future violations. Furthermore, it noted that if the violations that resulted in the Notice continue or are ongoing in nature, AWS maintained the right to take additional enforcement actions as authorized by law.

On November 11, 2020, AWS received an email from you in response to the Notice of Intent to Deny License Renewal and Notice of Deficiencies. AWS thoroughly reviewed and considered all information submitted by the kennel. The review of the November 11, 2020 response and the attachments provided by the kennel does not alter or mitigate the violations detailed in the Notice of Intent to Deny License Renewal and Notice of Deficiencies.

CONCLUSIONS

Based upon a review of all information available to AWS, the kennel has willfully and/or significantly violated the North Carolina Animal Welfare Act and its associated rules: 02 NCAC 52J .0102(1) and (3); .0103; .0201(a), (e), (h), and (l); .0204(b); .0207(b)(6) and (c); .0209(2); and .0210(c) and (d).

In addition, AWS concludes that:

- a) The kennel has willfully disregarded and violated the N.C. Animal Welfare Act ("AWA") and rules issued pursuant thereto as noted above;
- b) The kennel has failed to provide adequate housing facilities and/or primary enclosures for the purposes of the AWA and the watering, sanitizing and housing practices at the kennel are not consistent with the intent of the AWA and its rules adopted under this Article; and
- c) The kennel fails to possess the necessary qualifications to meet the requirements of the AWA for the holding of a boarding kennel license.

Pursuant to N.C.G.S. §§ 19A-30 and 19A-40, these violations can result in the suspension, revocation or refusal to renew a license for any kennel and/or the assessment of a civil penalty of up to \$5,000 per violation.

DENIAL OF APPLICATION FOR A BOARDING KENNEL LICENSE

Accordingly, pursuant to N.C.G.S. § 19A-30(2), (3), and (8), and due to the severity and number of violations of the AWA and its associated regulations noted above, I am hereby denying the application for the boarding kennel license for Lake Norman Puppy Planet Boarding Kennel.

Pursuant to NCGS § 19-28, no person shall operate a boarding kennel unless a license to operate such an establishment has been granted by the AWS. Operation of a boarding kennel without a currently valid license shall constitute a Class 3 misdemeanor under NCGS § 19A-33.

Additionally, if you operate an unlicensed boarding kennel, AWS has the authority to seek legal relief, including but not limited to imposition of a civil penalty of up to five thousand dollars (\$5,000.00) per violation of the AWA or its associated rules pursuant to NCGS § 19A-40.

APPLICATION FOR A BOARDING KENNEL LICENSE

Should you wish to obtain a boarding kennel license, you may reapply for the license and request a FCI once all of the renovations and improvements referenced in the November 11, 2020 email and its associated attachments are completed, and all primary enclosures, sanitation and record keeping procedures are in full compliance with the AWA and its associated regulations. Once the kennel is in full compliance with the AWA and its associated regulations, it must also receive an "Approved" rating on the FCI before the boarding kennel license can be issued. AWS is willing to accept the boarding kennel application submitted on October 27, 2020 and the required fee received October 13, 2020, until December 18, 2020. If the kennel applies for a boarding kennel license after December 18, 2020, the kennel will need to submit a new application and fee.

APPEAL

You may contest this decision by filing a petition under the North Carolina Administrative Procedure Act, within five (5) days of your receipt of this denial. If you file a contested case petition, it must be in writing and in the form prescribed by N.C.G.S. § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00). Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone 919-431-3000.


If you file a contested case petition, you must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

If you have any questions, you may call the AWS office at (919) 707-3280.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patricia Norris DVM, MS". The signature is fluid and cursive, with the last name "Norris" being the most prominent part.

Patricia Norris, DVM, MS
Director, Animal Welfare Section
Veterinary Division, NCDA&CS

Enclosure

cc:

R. Douglas Meckes, DVM, State Veterinarian,
Joseph Reardon, Assistant Commissioner, NCDA&CS
Tina Hlabse, General Counsel, NCDA&CS
Christopher McLennan, Assistant Attorney General

Appendix

RELEVANT LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year.

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

§ 19A-33. Penalty for operation of pet shop, kennel or auction without license.

Operation of a pet shop, kennel, or public auction without a currently valid license shall constitute a Class 3 misdemeanor subject only to a penalty of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00), and each day of operation shall constitute a separate offense.

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (1) name and address of owner or person responsible for animal, the date of entry and signature and address of individual to whom animal is released and the date of release;

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0103 INSPECTION OF RECORDS

All operators of animal shelters, pet shops, boarding kennels, public auctions, and persons operating as dealers shall make all required records available to the director or his authorized representative on request, during the business and cleaning hours listed on the license application. The operator must be able to match each animal to its record upon request. Records shall be maintained for a period of one year after the animal is released.

History Note: Authority G.S. 19A-24; 19A-25; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0201 GENERAL

(a) Housing facilities for dogs and cats shall be structurally sound and maintained in good repair to protect the animals from injury, contain the animals and restrict the entrance of other animals and people.

(e) Provisions shall be made for the daily removal and disposal of animal and food waste, bedding and debris from the housing facility in accordance with local ordinances, to assure facility will be maintained in a clean and sanitary manner.

(h) A separate five-foot perimeter fence is required if any animals have access to an outdoor enclosure, including unsupervised exercise areas.

(l) A licensee or registrant shall comply with all federal, state and local laws, rules and ordinances relating to or affecting the welfare of dogs and cats in its facility.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(b) Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, urn about freely, and to easily stand, sit, or lie in a natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0207 SANITATION

(b) Sanitation shall be as follows:

(6) Any area accessible to multiple animals shall be kept clean and sanitary.

(c) Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this Rule. Premises shall remain free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and to improve pest control, and to protect the health and well-being of the animals.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0209 CLASSIFICATION AND SEPARATION

Animals housed in the same primary enclosure shall be maintained in compatible groups, with the following additional restrictions:

(2) In boarding kennels, animals of different owners shall not have contact with other animals, unless written permission is obtained from the animal's owner. Any dog or cat exhibiting an aggressive disposition shall be housed individually in a primary enclosure.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0210 VETERINARY CARE

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005.